

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

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|-----------------------|---|------------------------|
| ROBERT GRADY JOHNSON, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Case No. CIV-04-1602-L |
| |) | |
| MIKE MULLEN, Warden, |) | |
| |) | |
| Respondent. |) | |

ORDER

This matter is before the court for review of the Report and Recommendation entered by United States Magistrate Judge Doyle W. Argo on April 20, 2005. Petitioner, a state prisoner appearing through counsel, brings this action pursuant to 28 U.S.C. §2254 seeking a writ of habeas corpus. Upon consideration of the impact of petitioner's prior habeas petitions, the Magistrate Judge concluded that the petition currently before the court is not a second or successive petition for purposes of 28 U.S.C. § 2244(b)(3)(A) and recommended that the matter be recommitted to the Magistrate Judge for additional proceedings on the merits.

The court file reflects that no party has filed a written objection to the Magistrate's Report and Recommendation within the time limit provided. Accordingly, and upon *de novo* review of the entire case file in this matter, the court finds that the Report and Recommendation of the Magistrate Judge should be and is hereby adopted in its entirety. **The petition for writ of habeas corpus**

currently before the court is not considered to be second or successive under 28 U.S.C. § 2244(b)(3)(A). This matter is recommitted to the Magistrate Judge for further proceedings on the merits of the petition in accordance with the original order of referral.

It is so ordered this 13th day of May, 2005.



TIM LEONARD
United States District Judge